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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,179	11/19/1999	EDWARD ALLEN BURKE	DWE/BURKE#1	8526

7590

04/11/2002

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EXAMINER

GREEN, BRIAN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 04/11/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/458,179

Applicant(s)

Examiner

Group Art Unit

3628

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2/18/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1, 6-10, 12-15, 17-19 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 1, 6-10, 13-15 is/are allowed.
- ☒ Claim(s) 12 and 17-19 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on Feb. 18, 2002 have been disapproved.

The proposed drawing correction to figure 2 has been disapproved since figure 2 does not include member 37. The proposed drawing corrections filed on July 16, 2002 were not approved so figure 2 does not include member 37. Therefore, there is no reason to cancel member 37 in figure 2. The addition of new figure 6 has been disapproved since the addition of member (74,76) is considered to be new matter.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plastic container having a mast receptacle defined in claim 14 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Specification

3. The amendment filed July 10 and July 16, 2001 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: stating on page 4, four lines from the bottom "base 11 by way of concealed clamps such as clamps 36" is new matter. Page 5, line 14, "Similarly,to the frame or tub base" is considered to be new matter. Page 6, "Referring to figure 6 the mast receptacle 76" is considered to be new matter.

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Applicant is required to cancel the new matter in the reply to this Office action.

Claim Rejections - 35 USC § 112

Claims 12 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12, lines 1 and 2 are indefinite since it is not clear whether the mast and base are the same as the mast and base defined in claim 1. In claim 17, lines 1-2, there is no antecedent basis for "said substantially vertical support means", and it is not clear whether the mast and stand are the same as the mast and base defined in claim 1.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaMotte (U.S. Patent No. 6,012,688) in view of Strom (U.S. Patent No. 4,885,858).

LaMotte shows in figures 17a-21 a display emblem having a tensioned outer surface forming a three-dimensional enclosure, first mounting attachment means (236,238,240,242), second mounting attachment means (236a,238a,240a,242a), and substantially vertical support means (shown in dotted lines). LaMotte discloses the applicant's basic inventive concept except for

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making the display surface in the form of a drinking cup. Strom shows in figures 1-5 the idea of making display surfaces in the imitation form of drinking devices such as bottles and cans. In view of the teachings of Strom it would have been obvious to one in the art to modify LaMotte by making the display surface in the form of a drinking cup since this would create a more amusing and attention attracting display device.

Applicant's arguments filed Feb. 18, 2002 have been fully considered but some of the arguments are not persuasive.

In regard to the applicant's argument that the subject matter shown in figure 6 is fully disclosed on page 2 of the specification. The examiner disagrees, the shape of the base, the shape and size of member (76), and how member (76) is attached to the base are all considered to introduce new matter. Page 2 of the specification fails to provide the necessary support to show the base and member (76) as proposed in figure 6.

The examiner has withdrawn the 112 first paragraph rejection in view of the applicant's originally filed specification, page 4, last 4 lines. The applicant's states that the bottom rim portion of the emblem is internally clamped to the frame. It is considered within one skilled in the art to be able to clamp the emblem to the frame. **However, the applicant must show the internal clamps. It is suggested that the applicant simply show the clamps as black boxes in figure 1. The portions of the clamps which are located behind the emblem should be shown in dotted lines to indicate that they can not be seen in figure 1.**

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6. The declaration of Edward Burke under 37 CFR 1.132 filed Feb. 18, 2002 is insufficient to overcome the rejection of claims 1,6-10,12-15, and 17-19 based upon the 102 and 103 rejections as set forth in the last Office action because: A declaration under 132 can not be used to overcome a 102 rejection, claims 1,9, and 17. With regard to the rest of the claims, the declaration merely contains Mr. Burke's opinions and lacks facts. Mr. Burke fails to provide any secondary considerations such as commercial success, long felt need, etc.

Allowable Subject Matter

7. The following is a statement of reasons for the indication of allowable subject matter: LaMotte (U.S. Patent No. 6,012,688) fails to show a single cantilevered support mast supported by a ballasted base structure, first mounting attaching means projecting from the mast in cantilevered relation, the mast extending upwardly within the emblem, and the first attachment means providing an upwardly resilient supporting force to the emblem.

Claims 1,6-10,13-15 are allowed.

Claims 12 and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011. The examiner can normally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson, can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.


BRIAN K. GREEN
PRIMARY EXAMINER

bkg

April 9, 2002